

Farmers' trusts must do better

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A REVIEW of succession and estate planning has prompted a wake-up call for farmers after it was revealed 85% of New Zealand trusts don't comply with the law.

The Perpetual Guardian analysis of the TrustGuard statistics found the rural sector, where many farms were in multi-generational ownership, was at risk when it came to trust governance.

Perpetual Guardian head of partnerships and marketing Charlotte Lockhart said it was one thing to set up a trust but keeping it up to date was just as critical.

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Charlotte Lockhart
Perpetual Guardian

Regular steps needed to be taken annually to stay current with legislation.

That included holding an annual meeting, keeping an accurate minute book, ensuring all the property was in the right ownership, trustees' details were up to date and insurance was all in place.

“Succession and estate planning are an alive process and must be kept alive, it's not set and forget,” Lockhart said.

“It's not just how the trust is set up but how it might integrate with the rest of the plan, including succession planning and any other trusts involved.”

Lockhart said to better meet farmers' needs Perpetual Guardian had established a three-year partnership with Federated Farmers.

As part of the partnership Perpetual Guardian had switched from asset-based charging to a fee-for-service model.

It entitled federation members to discounts on many important estate planning services together with services and advice from 40 estate planning specialists across 16 branches.

“We have the rural champions right throughout NZ and it is their role to ensure they partner with Feds members to help them.

“Estate and succession planning doesn't have to be hard, it just has to be done well.

“If anyone is unsure they just have to pick up the phone and we can get help to them,” Lockhart said.

One of the biggest issues arising was misunderstanding.

“It's about understanding. People need to understand and be fully aware of the skills needed for trust governance and management.

“Some trusts we just provide advice, other trusts we provide trustee services to farmers.”

Succession planning was about doing the best to keep families together and keeping properties together.

“If you leave any loopholes you are just asking for trouble,” Lockhart said.

Perpetual Guardian chief executive Grant Kemble said there were several common mistakes where farmers need to be aware regarding the governance of trusts.

They ranged from trustees' failure to understand the scope and weight of their responsibilities, problems with finer details of gift and debt

forgiveness, understanding of transfer of assets and use of personal bank accounts for trust purposes.

The lack of minute books, records of decision-making and annual meetings must be addressed, Kemble said.

He was familiar with cases in which farmers had appointed a neighbour or friend as trustee or executor and parties were not aware of the potential risk and legal implications of such a responsibility.

“Farmers work hard and have little time to think about their personal affairs as a result, which can see their estate and succession planning suffer,” Kemble said.

He acknowledged the new Health and Safety at Work Act had added to the workload.

“It's easy to overlook the end game when you are busy dealing with new regulations, bad weather or any number of other challenges. That's why it is critical to have trusted advisers who understand your needs and ensure your affairs are structured appropriately.”

Farmers should also consider the importance of ensuring they had up-to-date, legally sound wills, Kemble said.



DO IT RIGHT: The lack of minute books, records of decision-making and annual meetings must be addressed, Perpetual Guardian chief executive Grant Kemble says.